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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. ~~975~~ 117

WESLEY WENDELL WEST,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

JURISDICTIONAL STATEMENT.

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Appellant,

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THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

JURISDICTIONAL STATEMENT.

Appellant Wesley Wendell West is appealing from the Final Judgment of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, entered on December 4, 1959, affirming the judgment of conviction of the Municipal Court of Los Cerritos Judicial District, County of Los Angeles, State of California. Appellant respectfully submits this Jurisdictional Statement to show that the Supreme Court of the United States has jurisdiction of this Appeal and that a substantial federal question is presented.

Opinion Below.

There was no written opinion by the Appellate Department of the Superior Court, nor was there a written opinion by the Municipal Court. As is hereinafter dem-

onstrated, the constitutional question here presented was duly presented in both of the foregoing State courts, and the judgments of those courts necessarily involved a ruling upon this constitutional question adverse to Appellant. So far as is known to Appellant, this case is one of first impression in the State of California passing on the objection and challenge to the statute here involved on the Federal Constitutional ground herein specified.

Jurisdiction.

Appellant was charged in a criminal misdemeanor complaint with a violation of Section 531 of the California Vehicle Code (Cal. Stats. 1953, c. 458, p. 1702, Section 1). Appellant was convicted after a trial by jury and sentenced by the Municipal Court of Los Cerritos Judicial District. On appeal to the Appellate Department of the Superior Court, the judgment of conviction was affirmed.

The final judgment of the Appellate Department of the Superior Court set out herein in full in Appendix "A", was entered on December 4, 1959. [C. T. pp. 5 and 13.][1] a petition for rehearing was filed by Appellant on December 11, 1959, [C. T. pp. 6-10 and 13] and was denied on December 14, 1959. [C. T. pp. 11 and 13.] A Notice of Appeal to the Supreme Court of the United States was filed on March 3, 1960, in the Appellate Department of the Superior Court [C. T. pp. 1-4 and 13.] A similar Notice of Appeal was filed on March 3, 1960, in the Municipal Court of Los Cerritos Judicial

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[1] "C. T." is used to designate portions of the record contained in the Clerk's Certified Transcript of Record of the Appellate Department of the Superior Court.

District. [C. S. T. pp. 1-4.][2] By Order of April 15, 1960, the Honorable Frank G. Swain, Presiding Judge of the Appellate Department of the Superior Court, granted Appellant, pursuant to Rule 13 of the Rules of the Supreme Court of the United States, an Extension and Enlargement of Time from May 2, 1960, to and including June 2, 1960, within which to docket this case with the Clerk of the Supreme Court of the United States. [C. T. p. 157.]

The validity of Section 531 of the California Vehicle Code was drawn in question on the ground of its being repugnant to the United States Constitution, Fourteenth Amendment, Section 1, and the decision below was in favor of its validity. The Appellate Department of the Superior Court is the highest court of the State of California in which a decision herein could be had.

The jurisdiction of the Supreme Court to hear this appeal is conferred by 28 U. S. C. §1257 (2).

The following cases are believed to sustain the jurisdiction;

Lanzetta v. New Jersey, 306 U. S. 451 (invalidating a state statute under the due process clause of the Fourteenth Amendment to the United States Constitution); *Smith v. California*, 361 U. S. 147 (involving an appeal from the Appellate Department of the Superior Court); *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 63 (holding that there is jurisdiction if the necessary effect of the judgment has been to deny Appellant's claim of unconstitutionality).

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[2] "C. S. T." is used to designate portions of the record contained in the Clerk's Certified Supplementary Transcript of Record of the Municipal Court of Los Cerritos Judicial District.

The Statute and Constitutional Provisions Involved.

The Statute.

The text of Section 531 of the California Vehicle Code (Cal. Stats. 1953, c. 458, p. 1702, §1), the validity of which is involved, is as follows:

> "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway."

The Constitution.

The above statute is challenged as violative of the due process clause of the following portion of Section 1 of the Fourteenth Amendment to the Constitution of the United States:

> ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case.

On April 12, 1959, Appellant was arrested on the Santa Ana Freeway in Los Angeles County, State of California, and cited by a written notice to appear, commonly referred to as a traffic ticket, [C. T. p. 19] for a violation of Section 531 of the California Vehicle Code. In response to this notice, appellant appeared through his attorney and pleaded "not guilty." Subsequently, a misdemeanor complaint was prepared, verified, and filed

The Question Presented.

Have the People of the State of California deprived Appellant herein of liberty or property without due process of law under the United States Constitution, Fourteenth Amendment, Section 1, by convicting and sentencing him under a penal statute which provides that:

> "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway"

in that said statute is phrased in such vague, uncertain and indefinite terms as to fail to provide an ascertainable standard of guilt or innocence and is not supported by any other clarifying or guiding statute or other law providing such an ascertainable standard of guilt or innocence?

in the Municipal Court of Los Cerritos Judicial District charging Appellant with the violation of Section 531 of the California Vehicle Code and stating that Appellant ". . . did follow another vehicle more closely than was reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of said highway." [C. T. p. 14.][3] Appellant was brought to trial, and on May 28, 1959, a jury found Appellant guilty as charged. [C. T. pp. 15-16.] Appellant duly made a motion for new trial. This motion was denied. [C. T. p. 22] On September 1, 1959, the final judgment of conviction was rendered and Appellant was ordered to pay a fine in the sum of $10.00 and, if in default of the payment of said fine, Appellant was sentenced to be imprisoned in the Los Angeles County Jail at the rate of one day's imprisonment for each $5.00 of said fine until the fine was wholly satisfied, not to exceed two days. In addition, the sum of $1.00 was assessed against Appellant, making a total sum due of $11.00. [C. T. p. 22.]

Following the rendering of the judgment of conviction and sentence, Appellant duly filed a notice of appeal to the Appellate Department of the Superior Court from the judgment of conviction [C. T. pp. 22, 114-115], and a similar notice of appeal from the order denying the motion for new trial. [C. T. pp. 22, 112-113.] Stays of

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[3]In accordance with Section 739 of the California Vehicle Code, Appellant was cited by a written notice to appear. Under such circumstances, the written complaint (the accusatory pleading) need not be filed until such time as the defendant appears pursuant to that notice and pleads "Not guilty" of the offense charged. (California Vehicle Code, Section 739.1.) If a complaint is subsequently filed, it is the duty of the trial court to call upon the defendant to plead to this complaint. *People v. Agnew*, 140 Cal. App. 2d Supp. 837, 242 P. 2d 410.

execution were granted Appellant pending the appeals. [C. T. pp. 22-23] On December 4, 1959, the final judgment of conviction and the order denying the motion for new trial were affirmed by the Appellate Department of the Superior Court. [C. T. pp. 5 and 13.] Appellant's timely petition for rehearing filed on December 11, 1959, [C. T. pp. 6-10 and 13] was denied on December 14, 1959. [C. T. pp. 11 and 13.]

On March 3, 1960, a notice of appeal to the Supreme Court of the United States was duly filed in the Appellate Department of the Superior Court [C. T. pp. 1-4 and 13]; and on the same date, a similar notice of appeal was filed in the Municipal Court of Los Cerritos Judicial District. [C. S. T. pp. 1-4.] Stays of execution pending the appeal to the Supreme Court were granted to Appellant by the Municipal Court of Los Cerritos Judicial District. [C. T. p. 17; C. S. T. p. 5.] Appellant is not now in custody and has been allowed to remain on his own recognizance [C. S. T. p. 5.]

How the Federal Question Is Presented.

Appellant raised the federal constitutional question presented herein at the first available opportunity and at every stage of the proceedings thereafter. Prior to trial, Appellant raised the federal constitutional objection by demurring to the misdemeanor complaint on the grounds that the trial court had no jurisdiction of the offense charged in the complaint and that the facts stated in the criminal misdemeanor complaint did not constitute a public offense. This demurrer, filed with the trial court [C. T. p. 20], was supported by written [C. S. T. pp. 6-7] and oral argument [C. T. pp. 33-37], following which the trial court took the demurrer under submis-

sion [C. T. pp. 21 and 37.] In both the written and oral argument, Appellant drew in question the validity of the misdemeanor complaint and Section 531 of the California Vehicle Code upon which the complaint was based, and Appellant specified that he was relying upon the due process clause of Section 1 of the Fourteenth Amendment to the United States Constitution. [C. S. T. p. 6.] Following the close of the testimony in this case and prior to instructing the jury, the trial court overruled Appellant's demurrer. [C. T. pp. 22 and 88.]

After the return of the verdict and prior to the pronouncement of the judgment of conviction and the sentence, Appellant made a motion in arrest of judgment on the same grounds as those specified in the demurrer to the complaint and specified in that motion the same federal constitutional objections. [C. T. pp. 22 and 94-95.] The trial court denied this motion. [C. T. pp. 22 and 95]

Sections 1004, 1012, and 1185 of the California Penal Code provide that a demurrer to a complaint and a motion in arrest of judgment may be founded on the grounds that the court has no jurisdiction of the offense charged therein and that the facts stated do not constitute a public offense. See also *People v. Odom*, 19 Cal. App. 2d 641, 66 P. 2d 206. Such a demurrer or motion in arrest of judgment is a proper method in California for raising the objection that the statute or ordinance upon which the complaint or information or indictment is based is unconstitutional.

Stromberg v. California, 283 U. S. 359, 361;

Ex parte Keeney, 84 Cal. 304, 24 Pac. 34;

People v. McEntyre, 32 Cal. App. 2d Supp. 752, 84 P. 2d 560.

There is no appeal under California law from an order overruling a demurrer or from an order denying a motion in arrest of judgment.

People v. Miller, 95 Cal. App. 2d 631, 213 P. 2d 534.

The proper method under California law by which to review the overruling of a demurrer and the denial of a motion in arrest of judgment is by way of appeal from the judgment of conviction.

People v. Rogers, 163 Cal. 476, 126 Pac. 143.

People v. Wortman, 137 Cal. App. 339, 30 P. 2d 565.

Appellant's appeal from the final judgment of conviction was separate from his appeal from the order denying the motion for new trial. In California, a defendant may appeal in a criminal case either from the judgment of conviction or from the order denying a motion for a new trial or from both.

California Penal Code, Sec. 1466(2)

Appellant duly raised and presented to the trial court and to the Appellate Department of the Superior Court at every available opportunity the federal question presented in this appeal to the Supreme Court. Both Appellant (as discussed hereinafter) and Appellee argued in their respective briefs the constitutional question involved. [C. T. pp. 133-134, and 136-139.] There were no irregularities in Appellant's prosecution of his appeal to the Appellate Department of the Superior Court. Had there been, the appeal would not have been heard or decided on the merits, but would rather have been dismissed by the Court pursuant to Rule 10 of the

Rules on Appeal from Municipal Courts and Inferior Courts in Criminal Cases in California, contained in 26 Cal. 2d 29, and which provides in part as follows:

> "If the appeal is not brought to a hearing within the time limited, or the appellant otherwise fails to prosecute it with diligence, or if the appeal is irregular in any substantial respect, the Superior Court may, on motion of the respondent or on its own motion, after written notice to the appellant, order it dismissed."

In his appeal to the Appellate Department of the Superior Court, Appellant drew in question the validity of Section 531 of the California Vehicle Code under the due process clause of the United States Constitution, Fourteenth Amendment, Section 1, in each of the following:

1. Appellant's Proposed Statement on Appeal, served and filed with the Municipal Court of Los Cerritos Judicial District. [C. T. pp. 22, 24-25, and 29.] The Honorable John C. Landis, Judge of the Municipal Court of the Los Cerritos Judicial District, settled and allowed Appellant's statement on appeal and certified that the same was a true and correct statement of the proceedings in the trial court. [C. T. p. 28.]

2. Appellant's Opening Brief, duly filed with the Appellate Department of the Superior Court on November 13, 1959. [C. T. pp. 12-13; 116-122.]

3. Appellant's Closing Brief, duly filed with the Appellate Department of the Superior Court on November 24, 1959. [C. T. pp. 12-13; 144-147.]

4. Appellant's Petition for Rehearing, duly filed pursuant to Rule 7 of the revised Rules of the Appellate Department, contained in 26 Cal. 2d 6-7 [C. T. pp. 13; 6-7.]

In Appellant's appeal from the judgment of conviction, the following grounds of objections were presented to the Appellate Department of the Superior Court:

1. Section 531 of the California Vehicle Code is unconstitutional because it is in violation of the due process clause of the California Constitution (California Constitution, Article I, Section 13) in that said law is phrased in vague, uncertain and indefinite terms failing thereby to provide an ascertainable standard of guilt or innocence.

2. Section 531 of the California Vehicle Code is unconstitutional because it is in violation of the due process clause of the United States Constitution (United States Constitution, Fourteenth Amendment, Section 1) in that said law is phrased in vague, uncertain and indefinite terms failing thereby to provide an ascertainable standard of guilt or innocence.

3. Section 531 of the California Vehicle Code is an improper and unconstitutional delegation of powers by the legislative department to the judicial and executive departments in violation of Article III, Section 1 of the California Constitution.

No other grounds or objections were presented, and a decision by the court sustaining any one of the foregoing contentions would have necessitated the reversing of the judgment of conviction. The affirmance of the

judgment of conviction by the Appellate Department of the Superior Court necessarily involved the determination by that court that not one of the objections or grounds presented was well taken.

Therefore, even though the Appellate Department of the Superior Court wrote no opinion in this case, its decision and order affirming the judgment of conviction necessarily involved the decision that Section 531 of the California Vehicle Code was not unconstitutional under the due process clause of the United States Constitution, Fourteenth Amendment, Section 1.

The Questions Presented Are Substantial.

Probably no more hopeless or helpless feeling can be had than that of an Appellant who seeks the protection of the highest court in the land in what appears to be merely an $11.00 traffic offense. It is well known that the Supreme Court of the United States can grant a hearing to only a small fraction of those who come before it. Obviously, a fine of $11.00 would not be sufficient motivation for Appellant to seek a review of his case nor for the Supreme Court to hear it. But a denial of basic justice and of guaranteed natural and constitutional rights is a valid and compelling motive. As an eminent Texas Appellate Court jurist stated in a similar situation,

> ". . . [T]his is a case of no great concern when measured by the punishment inflicted, but, when measured by the questions presented and determined, it is a case of great moment and concern to the jurisprudence of this state and its citizenship,

because certain guarantees and mandates contained in our Constitution are either effective or they no longer exist."[4]

It has frequently been pointed out that the sole personal contact of most of our citizens with the penal laws of our nation is in the application and enforcement of traffic laws. Unfairness or inequity in such laws brings our entire system of justice into disrepute. Consequently, the unfortunate results of improper or unfair traffic laws are not to be measured by the penalty or the fine in an individual case, but by multiplying the aggrievements of all those who have been and will be unjustly treated. Thus, with each passing year, there is an increasingly widespread national interest and concern in the improvement of traffic court programs and traffic laws. A recent example is the Second Annual Law and Layman Conference held in Miami Beach, Florida, in August, 1959, under the auspices of the American Bar Association Traffic Court Program. Grave concern was expressed at that conference regarding the lack of public respect for traffic laws and traffic courts. Two of the principal objectives designated for the improvement of traffic case trials were that every effort should be made to insure that the defendant is fully apprised of the charges against him and that a goal of all traffic court trial cases should be to develop full and complete understanding of the law.[5]

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[4]Judge Davidson's dissent in *Rowland v. State* (Tex. Ct. Crim. App.), 311 S. W. 2d 831, 848.

[5]Proceedings of the Second Annual Law and Layman Conference, Miami Beach, Florida, August 24-25, 1959, American Bar Association, Traffic Court Program, Chicago 37, Illinois, page 32.

Moreover, the result of an improper upholding of the constitutional validity of a traffic law permeates all law. A precedent is established which is applicable to other penal statutes. The traffic statute itself is a criminal law which subjects a defendant, such as the Appellant herein, to criminal sanctions. Also, traffic statutes have a far-reaching effect in civil litigation.

The case at bar involves a penal statute which attempts to subject persons to criminal responsibility when their conduct in the operation of a motor vehicle is not "reasonable and prudent," but without statutory or other definition or explanation of the term "reasonable and prudent."[6] Yet, the question involved in this appeal is more basic than simply whether the standard of "reasonable and prudent" is sufficiently definite and certain for criminal traffic laws. The very first essential of due process of law is that a penal statute must be sufficiently clear and definite to enable a person to know, without guessing, what is required of him. *Connally v. General Construction Company*, 269 U. S. 385. Therefore, the fundamental question to be determined in this case is whether the standard of "reasonable and prudent" is a sufficiently clear, definite, and certain standard, without further explanation, qualification or amplification, to form the basis for any penal law.

Surely it could not be maintained that a state could revoke and repeal all of its present penal laws and substitute in place one criminal law which would direct that any person in his dealings and relationships with other persons should conduct himself in a "reasonable

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[6]"The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway." (Cal. Veh. Code 531.)

and prudent" manner, the violation of which would be punishable. Furthermore, it could hardly be imagined that it would be permissible for a state to pass but one law employing only the standard of "reasonable and prudent" for each branch of the criminal law or for every crime. Yet, where is the line to be drawn? Surely it is not to be conceded that the application of the constitutional requirement of definiteness and certainty is to be determined by the gravity of the offense or the size of the penalty, or that one standard applies to major crimes and another to traffic offenses.

In *Connally v. General Construction Company*, 269 U. S. 385, the Supreme Court emphasized the importance of the constitutional requirement for certainty and definiteness in criminal statutes as follows:

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. [Citations omitted]" 269 U. S. at 391.

Every man is entitled to know with certainty when his conduct will subject him to criminal penalties.

United States v. Reese, 92 U. S. 214, 220;
Lanzetta v. New Jersey, 306 U. S. 451, 453;
In re Newbern, 53 A. C. 789, 795, 3 Cal. Rptr. 364, 368-369.

In conformity with the foregoing principles, courts have voided statutes employing the word "reasonable," or equivalent words, as the standard in penal statutes without further clarification or definition. In *United States v. L. Cohen Grocery Company*, 255 U. S. 81, an Act of Congress made it unlawful for any person willfully "to make any unjust or unreasonable rate or charge in handling or dealing with any necessaries. . . ." The Supreme Court held that the quoted words were not sufficiently definite and certain to constitute an ascertainable standard of guilt. In *People v. Building Maintenance Contractors' Association*, 41 Cal. 2d 719, 264 P. 2d 31, the Supreme Court of California held unconstitutional, because of vagueness and uncertainty, a statute relating to combinations in restraint of trade wherein the prescribed standard was contained in the phrase "reasonable profit."

"Reasonable" as a standard in traffic laws has been condemned. In *State v. Lantz*, 90 W. Va. 738, 111 S. E. 766, a state statute made it a crime to operate a motor vehicle upon approaching and traversing a sharp curve without having the motor vehicle under control and without reducing its speed to a reasonable and proper rate. The West Virginia Supreme Court of Appeals voided the statute for uncertainty and indefiniteness and in so doing stated:

> "If this statute should be upheld, there would be no uniform rule of conduct governing the operation of an automobile upon curves and public roads. There would be as many different standards as there would be different opinions among the juries and judges trying the cases as the same arise, and no man would ever know, until after he was tried and

> convicted or acquitted upon the charge brought against him, whether he had been guilty of an offense or not." 90 W. Va. at 743; 111 S. E. at 768.

Similarly, in *Hayes v. States*, 11 Ga. App. 371, 75 S. E. 523, the phrase "reasonable and proper" as used in a speed statute was invalidated for vagueness and indefiniteness; and in *Ex parte Chernosky*, 153 Tex. Crim. Rep. 52, 217 S. W. 2d 673, the court held that the phrase "due caution or circumspection" as used in a criminal traffic law meant nothing more than ordinary negligence and held that such a standard was too indefinite and vague for valid penal legislation.

The fact that an expression is frequently used in the community can be the source of its vagueness and lack of precise definition. Its widespread usage causes it to acquire a multitude of definitions. Thus it has been stated with regard to the expression "common":

> "There can be no doubt that the term common drunk is in general use in the community, and the adjective common is undoubtedly one of the most widely used words of the English language. Here unfortunately, lies the difficulty, for we think it evident that such generality of usage has resulted in a variety of differing definitions rather than any single precise meaning to the term." *In re Newbern*, 53 A. C. 789, 796, 3 Cal. Rptr. 364, 369.

This same difficulty applies to the words "reasonable" and "prudent".

In 75 Corpus Juris Secundum at page 634 it is stated as follows in regard to the word "reasonable":

> "The word 'reasonable' is a relative generic term difficult of adequate definition. While it has been

said that it is an ordinary word in common use and familiar to the average person, in fact the dictionaries give a number of meanings for the word, and it has various shades of meaning and the particular shade is to be determined according to the context and circumstances in each particular case."

Thus, "reasonable" has been defined as meaning: "conformable to reason," "just," "proper," "fair," "equitable," "ordinary," "usual," and "sensible;" and equivalent or synonymous words have been held to be: "adequate," "equitable," "honest," "impartial," "just," "moderate," "ordinary," "possible," "probable," "proper," "rational," "satisfactory," "suitable," and "tolerable." 75 C. J. S. 634-635.

Accordingly, in the recent case of *Stuyvesant Town Corp. v. Impelliteri*, 114 N. Y. S. 2d 639, 657, 202 Misc. 661 Affd. 117 N. Y. S. 2d 686, 281 App. Div. 672, App. Den. 118 N. Y. S. 2d 753, 281 App. Div. 814, Affd. 118 N. E. 2d 601, 306 N. Y. 784, the court said that the term "reasonable" is a factual expression not ascertainable by reference to rule, law, or formula, and is not subject to exactness of definition.

In 73 Corpus Juris Secundum at page 273, there is also a discussion as to the meaning of the word "prudent," wherein "prudent" is said to be:

"Dictated or directed by prudence or wise forethought; characterized by, arising from, or manifesting prudence, as prudent rulers, actions, or laws; capable of directing or conducting one-self wisely and judiciously; morally or intellectually disciplined; sagacious in adapting means to ends; circumspect in action, or in determining any line of conduct;

cautious, circumspect, or discreet, as in conduct, choice of ends, or business management; not rash or ill-advised; highly sensible; often frugal; provident; practially wise; judicious; careful; discreet; circumspect; sensible.

"'Prudent' has been held equivalent to, or synonymous with, 'careful' . . ., 'cautious' . . ., 'considerate' . . ., 'economical' . . ., 'frugal' . . ., and 'wary'."

How then can it be said that a criminal statute wholly dependent upon the words "reasonable and prudent" fairly apprises the citizen of what conduct on his part is prohibited by law and that a statute so worded is not unconstitutionally vague and uncertain?

Nor is it enough to render a criminal law certain and definite merely to say that conduct is reasonable if it is that of a prudent man in like curcumstances. The very word "circumstances" and the term "in like circumstances" are also too vague and uncertain for use in a criminal statute. In *Connally v. General Construction Company*, 269 U. S. 385, a suit was brought to enjoin Oklahoma State Officers from enforcing an Oklahoma statute which provided that certain designated employees shall be paid "not less than the current rate of per diem wages in the locality where the work is performed." The phrase "the current rate of per diem wages" was condemned by the Supreme Court of the United States, not only because it failed to denote a specific or definite sum, but also because it encompassed a wide range of amounts, which amounts would vary according to the circumstances and conditions. In addition, the Supreme Court stated that the word "locality" was too dependent

upon "circumstances" to be definite enough to impose criminal penalties. If the determination of what is reasonable is dependent upon "circumstances", its use as a standard in criminal traffic laws would furnish to the driver of a motor vehicle no more warning or notice as to what conduct was proscribed than did the phrase "current rate of per diem wages" or the word "locality" in the *Connally* case, *supra*, where they were dependent upon "circumstances".

No matter what efforts are made to rationalize the use of such terms as "reasonable" or "prudent" the fact is that the terms are vague and uncertain and, standing alone and unexplained, cannot inform a person of what conduct on his part is prohibited by penal statute.

The compelling need of a definite standard by which to understand and enforce the challenged statute is demonstrated by the testimony of Appellant—which was not contradicted—as to the difficulty the arresting officer had in explaining what conduct conformed with and what conduct violated the statute and as to the officer's equivocal explanation finally that this depended upon "conditions" but that there was a rule of thumb requiring an automobile to be kept a distance behind preceding traffic of one car length for each ten miles of speed. [C. T. pp. 58-59.] The fact that such a standard was used administratively, not only indicates its need, but even more importantly demonstrates that a statute could readily have been enacted with certain and definite standards that would then be known and understood by all and that would have complied with settled principles of law.

The nearest analogy that Appellee was able to present in its argument before the courts below was a speed

law (California Vehicle Code, §510; Cal. Stats. 1935, c. 27, p. 176, §510), which attempted to use the "reasonable and prudent" standard in regulating speed. However, this section and similar sections in other jurisdictions are not without any standard, because they are accompanied by other sections providing a *prima facie* standard in *miles per hour.*[7] For example, Section 511 of the California Vehicle Code (Cal. Stats. 1955, c. 866, p. 1480, §1) established 55 miles per hour as the maximum *prima facie* speed limit, and a motorist who exceeded this limit was aware that he was acting at his peril. Even with a *prima facie* standard it may well be questioned if such laws are sufficiently certain and definite to be constitutional. It is noteworthy that since the case at bar was heard in the courts below, new legislation became operative in California and that Section 22349 of the California Vehicle Code (Cal. Stats. 1959, c. 11, p. 1854, §15, operative Jan. 1, 1960) now provides a maximum speed limit of 65 miles per hour, which is not *prima facie,* but absolute. The vagueness and indefiniteness of the "reasonable and prudent" standard was found to render the enforcement and administration of speed laws impractical, if not impossible. On this account and for this reason, the California Legislature corrected and amended the speed laws to provide for a definite and absolute speed limit of 65 miles per hour.

For all too long there has been a tendency in some jurisdictions to set aside sound constitutional limitations because of expediency or to satisfy the militant demands

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[7] *People v. Beak*, 291 Ill. 449, 126 N. E. 201; *State v. Goldstone*, 144 Minn. 405, 175 N. W. 892.

of those who in their desire for a law that prohibits every conceivable sin are inclined to overlook the dangers in thus denying the public constitutional safeguards. If such a trend continues in traffic law legislation, the ultimate result could be that all vehicle laws would be reduced to simple and all-embracing language, such as:

> "No person shall operate or use a motor vehicle in any manner that is not reasonable and prudent."

Such an extreme appears ridiculous but could be supported logically by the reasoning of the decisions that have followed this trend while paying mere lip service to the fundamental principles of *Connally v. General Construction Co.*, 269 U. S. 385.

However, in this era of increasing awareness of the value of fundamental and natural rights preserved in our Constitution and of the need of creating and preserving the respect not only of our own citizenry, but of the world, for our system of justice, there is a trend in our recent judicial opinions to weigh carefully the right to fair play, justice, and constitutional safeguards against the contention that modern life requires general and all-embracing laws which will permit convictions under all conceivable circumstances.

The more recent trend is well illustrated by the history of the case of *People v. Daniel*, 168 Cal. App. 2d Supp. 788, 377 P. 2d 247, which was relied upon heavily by counsel for the People in Respondent's Brief before the Appellate Department of the Superior Court of the State of California as substantiating the People's contention that Section 531 of the California Vehicle Code was constitutionally definite and certain. [C. T. p. 138.]

In that case, the court held that the phrase "common drunkard" as contained in Section 647 (11) of the California Penal Code was not so uncertain or vague or indefinite as to fail to provide an ascertainable standard of guilt or innocence. However, on March 8, 1960, subsequent to the decision by the Appellate Department of the Superior Court in the case at bar, the Supreme Court of the State of California in a unanimous decision in the case of *In re Newbern*, 53 Adv. Cal. 789, 3 Cal. Rptr. 364, expressly disapproved the holding in the case of *People v. Daniel* and held that the provisions of the California Penal Code declaring that every "common drunkard" is a vagrant is unconstitutionally vague, uncertain, and incapable of being uniformly enforced. The opinion of the Supreme Court in the *Newbern* case, after stating that the word "common" has a variety of differing definitions rather than any single precise meaning says:

> "By its terms the statute leaves to the individual judge or jury the determination of the meaning of the law as well as what proven facts render the accused guilty or innocent. It is not difficult to visualize the divergence of decisions or verdicts that must ensue when the law leaves its definition and meaning to be determined by judges and juries who might differ widely in regard to it." *In re Newbern*, 53 Adv. Cal. 789 at 800, 3 Cal. Rptr. 364, at 371.

The foregoing language is strikingly similar to that used in *Connally v. General Construction Co., supra, 269* U. S. 385, 395, where this Honorable Court stated:

> "The result is that the application of the law depends not upon a word of fixed meaning in it-

self, or one made definite by statutory or judicial definition, or by the context or other legitimate aid to its construction, but upon the probably varying impressions of juries as to whether given areas are or are not to be included within particular localities. The constitutional guaranty of due process cannot be allowed to rest upon a support so equivocal."

The California criminal statute here attacked (Vehicle Code, Section 531) provides no ascertainable standard of guilt or innocence, nor is it aided by any other statute or law which provides a suitable and applicable standard. The statute, therefore, fails to inform those subject to it what conduct on their part will render them liable to its penalties and is inconsonant with ordinary notions of fair play and the settled rules of law.

The judgment of the Appellate Department of the Superior Court of the State of California is contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States and in conflict with such decisions as *Connally v. General Construction Co.*, 269 U.S. 385; *In re Newbern*, 53 Adv. Cal. 789, 3 Cal. Reptr. 364, *State v. Lantz*, 90 W. Va. 738, 111 S. E. 700, *Hayes v. State*, 11 Ga. App. 371, 75 S. E. 523, and *Ex parte Chernosky*, 153 Tex. Crim. Rep. 52, 217 S. W. 2d 673.

It is submitted that Section 531 of the California Vehicle Code (Cal. Stats. 1953, c. 458, p. 1702, §1) violates the due process clause of Section 1 of the Fourteenth Amendment to the United States Constitution and is invalid and that the Appellate Department of the Superior Court of the State of California erred in holding

otherwise. The conflict in the decisions of the various state courts and the imperative need to restore traffic legislation upon a constitutional basis providing for fair play causes the questions presented by this appeal to be substantial and of public importance.

Respectfully submitted,

HENRY T. MOORE. SR.,

Counsel for Appellant Wesley Wendell West.

HENRY T. MOORE, JR.,

Of Counsel.

APPENDIX A.

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES

Superior Court No. CR A A227 Trial Court No. F-859048

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff and Respondent,

vs.

WESLEY WENDELL WEST,
Defendant and Appellant.

ON APPEAL
from the
MUNICIPAL COURT
of the
Los Cerritos
Judicial District,
County of Los Angeles,
State of California.
John C. Landis, Judge

FILED
DEC - 4 1959
HAROLD J. OSTLY, County Clerk
By [signature] Deputy

This cause having been argued and submitted and fully considered, judgment is ordered as follows:

It is ORDERED and ADJUDGED that the judgment and order denying motion for new trial made and entered in the Municipal Court of the Los Cerritos Judicial District, County of Los Angeles, State of California, in the above entitled cause be and the same are hereby affirmed.

December 4, 1959

BY THE COURT.

[signature] Presiding Judge.

[signature] Judge.

[signature] Judge.

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JUN 21 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. ~~975~~ 117

WESLEY WENDELL WEST,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

MOTION TO AFFIRM THE JUDGMENT AND/OR DISMISS THIS APPEAL.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. .....

WESLEY WENDELL WEST,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

MOTION TO AFFIRM THE JUDGMENT AND/OR DISMISS THIS APPEAL

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States (1959 Pocket Supp.), moves that the judgment and order of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, rendered and entered on the 4th day of December, 1959 (rehearing thereon was denied the 14th day of December 1959), be affirmed, and/or that the appeal taken therefrom to the above entitled court be dismissed.

The said motion to affirm the judgment or dismiss this appeal is made upon the following grounds:

(1) That the appeal herein does not present a substantial federal question;

(2) That the judgment and order rest on an adequate non-federal basis.

The Question Presented.

The appellant was charged and convicted upon a misdemeanor complaint filed in the Municipal Court of the Los Cerritos Judicial District, County of Los Angeles, State of California, upon a violation of section 531 of the Vehicle Code of the State of California.

Said section 531 of the California Vehicle Code read, at the time of the offense, as follows:

> "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway." (Statutes 1923, Chapter 266, Sec. 27, p. 558. This section is section 21703 in the new California Vehicle Code, effective September 25, 1959, verbatim.)

Appellant contends that the said statute is phrased in such vague, uncertain and indefinite terms as to fail to provide an ascertainable standard of guilt or innocence and is not supported by any other clarifying or guiding statute or other law providing for such an ascertainable standard of guilt or innocence.

On page 13 of appellant's jurisdictional statement is the following assertion:

> "Therefore, the fundamental question to be determined in this case is whether the standard of 'reasonable and prudent' is a sufficiently clear, definite, and certain standard, without further explanation, qualification or amplification, to form the basis for any penal law."

This assertion is, therefore, the crux of appellants petition.

I.

No Substantial Federal Question Is Presented by This Appeal.

(A) The Modern Trend in Criminal Statutes Is a "Rule of Reason".

The general rules as to the sufficiency of the statement of a statutory crime are well understood. In 14 Am. Jur. "Criminal Law," Sec. 19, pages 773-774 is the statement:

> "The legislature, in the exercise of its power to declare what shall constitute a crime or punishable offense, must inform the citizen *with reasonable precision* what acts it intends to prohibit, so that he may have an understandable rule of conduct, and to know what acts it is his duty to avoid. . . . Every uncertainty, however, which may exist in the operation of a criminal statute does not render it void." (Citing *Pacific Coast Dairy v. Police Court*, 214 Cal. 668, 8 P. 2d 140, 80 A. L. R. 1217.) (Emphasis added.)

It is a recognized rule of construction as stated in *Ex parte Frye*, 143 Tex. Cr. R. 9, 156 S. W. 2d 531, 533:

> "Every presumption is in favor of the constitutionality of an act of the legislative body of a state and the courts will not declare it invalid unless, in their judgment, it clearly and unmistakably comes within the inhibition of the Constitution." (*Cooley's Const. Lim.*, 8th Ed., Vol. 1, page 371; *Graves v. Minn.*, 272 U. S. 425, 47 S. Ct. 122, 71 L. Ed. 331, and other cases cited.)

In *Lorensen v. Superior Court*, 35 Cal. 2d 49 [216 P. 2d 859], defendant and others were charged with conspiracy to commit certain named crimes and "to pervert

and obstruct justice or the due administration of the laws." On denying a contention that the quoted part was void for uncertainty and ambiguity, the court states:

> "To comply with the constitutional requirement of due process of law the crime for which a defendant is being prosecuted must be clearly defined. It is only necessary that the words used in the statute be well enough known to enable those persons within its reach to understand and correctly apply then. 'To make a statute sufficiently certain to comply with constitutional requirements it is not necessary that it furnish detailed plans and specifications of the acts or conduct prohibited.'"

Vehicle laws are particularly subject to questions on the matter of vagueness, but have been universally upheld, so long as there is a basic condition in the statute for ascertaining the circumstances surrounding the occasion where it is applied. In *State v. Coppes* (1956), 78 N. W. 2d 10, 247 Iowa 1057, Anno. 26 A. L. R. 901, 29 A. L. R. 1066, numerous cases similar to the one involved in the instant case are analyzed. In the *Coppes* case the court was testing section 321.285 of the Iowa Code, providing vehicle speed restrictions using the following expression (in part): "Any person driving a motor vehicle on a highway shall drive the same at a *careful and prudent speed* not greater than nor less than is *reasonable and proper*, having due regard to the traffic, surface and width of the highway and of *any other conditions* then existing. . . ." (Emphasis added to this and succeeding quotations.)

Expressions of the problem of striking at the evil sought to be remedied in motor vehicle traffic laws are illustrated in the cases reviewed in the *Coppes* case. To cite ex-

amples: In *Commonwealth v. Pentz*, 247 Mass. 500, 143 N. E. 322, 324:

> "The court, in part said: 'By its terms, whoever upon any way operates a motor vehicle . . . *so that the lives or safety of the public might be endangered* is made subject to punishment. The operation of an automobile upon a way is a clearly defined act, susceptible of being easily understood. Its operation so as not to endanger the lives or safety of the public *is the description of a fact*. While it may not be easy to formulate in words a comprehensive definition of that fact applicable to all cases, it is not difficult to comprehend with some approach to accuracy the thought conveyed by the description of that fact."

In *State v. Ashton*, 175 Kan. 164, 262 P. 2d 123, 130, the statute related to the operation of an automobile on a public highway in *"negligent disregard of the safety of others resulting in the death of his passenger,"* the court states:

> "Manifestly, no legislature could accurately anticipate every possible circumstance or contingency which might arise and legislate specifically concerning it. That would be true concerning speed and all other factors which might become involved in highly dissimilar situations. Some offenses admit of much greater precision and definiteness than others and where possible statutes always should be framed with reasonable certainty. *Reasonable and not mathematical certainty is what the law requires. It appears the instant statute is about as definite and certain as the subject matter, the evil sought to be remedied, permits. This is the real test.* Under such circum-

stances a police measure enacted for the safety of the public will not be nullified on the ground of constitutional invalidity."

The *Coppes* case (*supra*), sustaining the regulation as above stated, was approved in *Sate v. Holling* (Iowa), 78 N. W. 2d 25 (July 1956), which overruled a constitutional attack upon the Iowa statute section 321.288 I. C. A., providing *"Control of Vehicle."* "The person operating a motor vehicle or motorcycle shall *have the same under cont. and shall* reduce the speed to a *reasonable and proper rate.* . . . ." The court uses the following language (78 N. W. 2d at page 26):

> "We agree with the statement in *Commonwealth v. Klick*, 164 Pa. Super. 449, 65 A. 2d 440, 442: 'The mandate of [the section] is a salutary police measure limiting the operation of motor vehicles, in the public interest. To define specifically permissible rates of speed under every conceivable condition would be manifestly impossible; hence the general language . . . is no valid objection to it on constitutional grounds."

In *People v. McMurchy*, 249 Mich. 147, 228 N. W. 723, 731, a statute was upheld which prohibited operation of any vehicle *"at an immoderate rate of speed or in a careless or reckless manner."* The determination of its violation was declared a question of fact for the jury. The following language is there used:

> "In 47 States of the Union and in the District of Columbia and Hawaii, there are statutes which forbid driving 'at a rate of speed greater than is *reasonable and proper*, having due regard for the width, traffic and use of the highway and in a manner so

> as to *endanger property or limb* of any person.' In some of the states the words *'careful and prudent'* are used. In others, words with a like meaning to those quoted are used."

For other cases, see *State v. Schaffer*, 96 Ohio St. 215, 117 N. E. 220, L. R. A. 1918B, 945; *Seegman v. Dist. of Columbia* (D. C. Mun. App.), 48 A. 2d 764; *State v. Magaha*, 182 Md. 122, 32 A. 2d 477; *Gallagher v. State*, 193 Ind. 629, 141 N. E. 347, 29 A. L. R. 1059.

In *State v. Wojahn* (1955), 204 Ore. 84, 282 P. 2d 675, the court sustained against the contention of vagueness the Oregon statute in which the terms used were that the accused "drove in a negligent manner" and "without due caution and circumspection." After stating that the speed of motor vehicles is regulated by the basic law, in O. R. S. 483.102, which states the rule that "no person shall drive a vehicle upon a highway at a speed greater than is *reasonable and prudent*, having due regard to the traffic, surface and width of the highway, *the hazard at intersections and any other conditions then existing.*" (2) nor at a speed which is greater than "will permit the driver to *exercise proper control* of the vehicle and to decrease speed or to stop *as may be necessary to avoid colliding* with any person, vehicle or other conveyance. . . ."

We find the following rule set out in *Lockheed Aircraft Corp. v. Superior Court* (1946), 28 Cal. 2d 481, 484 (171 P. 2d 21, 166 A. L. R. 701):

> "All presumptions and intendments favor the validity of a statute. . . . It must be upheld unless its nullity clearly, positively and unmistakably appears."

(B) The California Statute Here Involved Meets the Requirement of Certainty as Required Under Modern Authorities.

It should be noted that the California Vehicle Code section 531 contains necessary standards and controls of the term "reasonable and prudent," wherein it is stated:

> "having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway."

Attention is also called to the fact that the section has been part of the law of the highways of California since long before the 1923 Vehicle Code.

In *Ex parte Daniels* (1920), 183 Cal. 636 (92 Pac. 442, 21 A. L. R. 1172), the Supreme Court stated at page 646 as follows:

> "We conclude, then, that section 22(d) of the Motor Vehicle Act of 1919 evidences an intent on the part of the legislature that the restriction that the speed cannot be *unreasonable and unsafe* shall be the test of the legality of the speed at any place within the state, and that this involves the right to have that question determined by a jury rather than by a local legislative body. We have so far assumed that the state law prohibiting an unreasonable speed is not too uncertain to be a valid criminal statute. . . . We will not undertake to review the authorities cited on this subject, but will call attention only to those which in our judgment clearly establish the validity of such legislation. In this connection it may be stated that there has been a tendency to a much more liberal construction of such statutes in the more recent decisions. In the *Standard Oil* case, 221 U. S.

1 [55 L. Ed. 619, 34 L. R. A. (N. S.) 834, 31 Sup. Ct. Rep. 502; see also Rose's U. S. notes], the Supreme Court of the United States, in interpreting the anti-trust law, adopted what has been characterized as the 'Rule of Reason,' holding that this law 'really was not a denial of all restraint of trade, but only a denial of an unreasonable restraint of trade,' thus leaving to courts and juries the determination of what restraints of trade were unreasonable." (Cites *People v. Pearne,* 118 Cal. 154 [50 Pac. 376].)

The test of reasonableness in Vehicle Code section 531 is supplied within the wording of the code. In *People v. Dickenson* (1959), 343 P. 2d 800, 171 Cal. App. 2d Supp. 872, at 875, is the statement:

> "It cannot be properly said that the mere fact that an enactment is based upon the test of reasonableness renders the enactment vague or uncertain or invalid so long as there is prescribed a test to be applied to determine that reasonableness. For example, the requirement of the California Vehicle Code, Section 510, setting forth the basic speed law is based entirely upon reasonableness, but it is prescribed that the speed must be reasonable *in view of certain things to be taken into consideration. This requirement has been uniformly upheld.*" (Emphasis has been added.)

The test in the *Dickenson* case was that the premises be so arranged as to permit a reasonable inspection as required. "It is the opinion of this court that the ordinance thereby lays down the test for reasonableness."

The test under the Vehicle Code section 531 involved in the instant case, has been clearly set forth in the enactment. In the *Coppes* case (*supra*), 78 N. W. 2d 10,

the enactment used the phrase "at a careful and prudent speed" having due regard, etc. In *Gallagher v. State* (*supra*), 141 N. E. 347, the phrase used in the statute was "at a speed greater than is reasonable or prudent *having regard to the traffic and use.* . . ."

In the *Cuppes* case, 78 N. W. 2d 10, 24, the court concludes:

> "This statute is directed primarily to the operators of motor vehicles on public highways. Such persons must obtain licenses before they can lawfully become such operators, and to entitle them to such licenses must show their ability to properly operate motor vehicles and an adequate knowledge of the laws of the road. . . . They know or should know what speed is proper and reasonable under different traffic conditions. They will have no difficulty in understanding the provisions of Section 321.285 and will know when they are violating them. . . ."

California has strict examinations and licensing regulations for vehicle drivers.

The applicability of Vehicle Code, Section 531 was the basis of the appeal in *Landrum v. Severin* (1951), 37 Cal. 2d 24, 230 P. 2d 337. The jury was there instructed:

> "The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon, and condition of, the roadway."

In said case (37 Cal. 2d at 25) we find the following statements:

> "The statute fixes a rule of conduct for a driver following another automobile."

The court states at 37 Cal. 2d 26-27:

> "It was for the jury to determine whether, *considering all of these circumstances,* Landrum was driving his car at a distance behind the one ahead of him which was less than was reasonable and prudent. The space between vehicles may be such that, as a matter of law, there was or was not a violation of the statute. . . . By the instruction challenged in the present case, the question as to Landrum's conduct properly was left to the jury. In view of all of the circumstances, it cannot be said that there is insufficient evidence to support the implied finding of a violation of the quoted section." (Emphasis added.) Principle followed in *Clinkscale v. Carmershausen* (1956), 145 Cal. App. 2d 76, 81 [302 P. 2d 23].

In 5-A Am. Jur. "Automobiles," Section 38, page 246, it is stated:

> "It is generally held, however, that statutes or ordinances providing that no person shall operate or drive any motor vehicle recklessly or at a rate of speed greater than is reasonable or proper, having regard to the width, traffic and use of the highways, and the general and usual rules of the road, or so as to endanger the property, life, or limb of any person, are not invalid on the ground that they are too vague, uncertain, and indefinite to sustain a criminal conviction."

Again, we find in 5-A Am. Jur., Section 347, page 443, the following rule and citations:

> "A violation of a statute providing that the driver of a motor vehicle shall *not follow* another vehicle

more closely than is reasonable and prudent, with regard for the safety of others and regard to the speed of such vehicles and the traffic upon and conditions of the highway has been held to constitute negligence per se, and if injury proximately results therefrom, it is actionable." (*Murray v. Atlantic Coast Line R. Co.*, 11 S. E. 2d 326, 218 N. C. 392; *Tarrant v. Pepsi-Cola Bottling Co.*, 20 S. E. 2d 565, 221 N. C. 390.)

California cases have followed the general rules adverted to above. In *Giles v. Happely* (1954), 123 Cal. App. 2d 894, 899-900 [267 P. 2d 1051], we find this statement:

"Clearly, this proposition [violation of Vehicle Code sec. 531] is not meritorious. It was a question of fact from the evidence for the jury to determine whether or not defendant Happely was following unreasonably close to the car in front of him. We cannot say that 18 feet, which Mrs. Happely testified was the distance their car was from the car in front of them, was under the circumstances a reasonable interval to allow between cars."

In *Driver v. Norman* (1951), 106 Cal. App. 2d 725, 728 [236 Pac. 246], it is stated:

"Assuming his speed to have been approximately 25 miles per hour—slightly over 36 feet per second—such testimony is in accord with the normal reaction time of three-fourths, second required from the time a person sees danger until he can get his foot on the brake.

The question of appellant's negligence in following the Cadillac too closely was also for the trier

of fact. (*Elford v. Hiltabrand*, 63 Cal. App. 2d 65, 74 [146 P. 2d 510]; *Donahue v. Mazzoli*, 27 Cal. App. 2d 102, 106 [80 P. 2d 743].)"

In *Kelley v. Hodge Transportation System* (1925), 197 Cal. 598, 607 [242 P. 2d 76], we find the statement:

"The court at considerable length instructed the jury as to the meaning of the terms 'a man of ordinary prudence,' and 'ordinarily prudent person' and a 'reasonable man.' Those terms, like the term 'reasonable doubt' are easily understood, but are difficult to define." (*Cf. Clinkscale v. Germershausen* (1956), 145 Cal. App. 2d 76, 81 [302 P. 2d 23]; *Jacob v. Key System Transit Lines* (1956), 140 Cal. App. 2d 357 [295 P. 2d 569]; *Karageozian v. Lost*, 139 Cal. App. 2d 874, 877 [294 P. 2d 778]; 6 Cal. Jur. 2d, Section 139, p. 600.)

As stated in *Snyder v. Massachusetts* (1933), 291 U. S. 97, 116, 122 (54 S. Ct. 330, 78 L. Ed. 674, 90 A. L. R. 575):

"Due process of law requires that the proceedings shall be fair, but fairness is a relative, not absolute concept. It is fairness with reference to particular conditions or particular results. . . . But justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament."

In *Roth v. United States* (1956), 354 U. S. 476, 491 (1 L. Ed. 2d 1498), in discussing the California and Federal obscenity statutes, the opinion states:

"'[T]he Constitution does not require impossible standards'; all that is required is that the language

'convey sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.' . . .

"'That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold language too ambiguous to define a criminal offense.'"

Other California cases interpreting words of common experience may be mentioned. *People v. Kiser* (1952), 112 Cal. App. 2d Supp. 903 [245 P. 2d 1125] ("able" and "effective" and "minimize"); *Smith v. Peterson* (1955), 131 Cal. App. 2d 241, 250 [280 P. 2d 522] ("excessive" and "unusual"); *Ex parte Daniels* (1920), 183 Cal. 636, 647 [192 P. 2d 442] (California basic Vehicle Code Speed Law, Section 510, "No person shall drive a vehicle upon a highway at a speed greater than is *reasonble or prudent* having due regard for the traffic on, and the surface and width of, the highway, and in no event at a speed which *endangers the safety of persons or property*"). In *Yanke v. State Department Public Health* (1958), 162 Cal. App. 2d 600, 605 [328 P. 2d 556], it was held that the word "'adequate' is not so uncertain as to render a penal statute invalid."

As stated in *People v. Darby* (1952), 114 Cal. App. 2d 412 [250 P. 2d 353], to make a statute sufficiently certain to comply with constitutional requirements it is not necessary that it furnish detailed plans and specifications of the acts or conduct prohibited.

It would seem that such a statute, which has found validity and favor over the period of the automobile age in forty-eight states and the District of Columbia, does not raise a substantial Federal question.

II.

No Other Points Are Presented.

Appellant in his jurisdictional statement has presented only the contention herein discussed, and which he designates as the fundamental question to be determined, that is, "whether the standard of 'reasonable and prudent' is a sufficiently clear, definite and certain standard" (p. 13 of said statement).

III.

The Judgment and Order Herein Rest on an Adequate Non-Federal Basis.

The Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, which constitutes the final court of appeal from the Municipal Court judgment of conviction and order denying motion for a new trial, rendered its judgment in the instant case without a written opinion.

In *Stembridge v. Georgia* (1952), 343 U. S. 541, 547-549 the following statement is found:

> 'Where the highest court of the State delivers no opinion and it appears that the judgment might have rested upon a non-federal ground, this court will not take jurisdiction to review the judgment." (Citing numerous cases.)

The record in the instant case presents the identical consideration, as the record shows that the State appeal raised various non-federal grounds upon which the appellate judgment may have rested.

Conclusion.

To all intents and purposes this appeal reduces to the proposition that section 531, California Vehicle Code, violates due process, not by reason of the vagueness of the wording used, as these terms have been ruled acceptable as used in the basic speed laws, but by reason of an absence of an ascertainable standard in the case of section 531. Two clear answers to this contention are: (1) Both sections 510 and 531, are parts of the same code and statutes are considered as a single statute in matters of interpretation and construction. (*People v. Darby* (1952), 114 Cal. App. 2d 412 [250 P. 2d 353], *supra.*)

Appellant in his opening brief in the State court appeal, page 6, raised the question of the constitutionality of section 531, Vehicle Code, but in the same breath stated that he was well aware that section 510 thereof (basic speed law, using the terms reasonable and prudent, as discussed above) was held constitutional, and was not vague or indefinite, but contends that the use of the same terms in section 531 of said code, are distinguishable, as not containing the same standard. In this connection, appellant has overlooked the terms used in both section 510 and section 531 of said code,—following the words: "Reasonable or prudent," which read "having due regard for the traffic on, and the surface and width of, the highway" in section 510, and the words "having due regard for the speed of such vehicle and the traffic upon, and the condition of, the roadway,' in section 531 thereof. If the one phrase meets constitutional standards, clearly the other phrase qualifies.

(2) Section 531 contains within itself a recognized standard to be applied. See *People v. Dickenson* (1959),

343 P. 2d 800, 171 Cal. App. 2d Supp. 872 (*supra*), and cases cited herein.

It is respectfully submitted that no substantial Federal question is presented by this appeal: that the decision appealed from might have rested upon adequate non-federal grounds and that for these reasons the judgment and order appealed from should be affirmed and the appeal therefrom should be dismissed.

Respectfully submitted,

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